

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,

Plaintiff,

v.

B. JOHNSON, et al.,

Defendants.

No. 2:21-cv-00692-DAD-AC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
THIS ACTION

(Doc. No. 71)

Plaintiff, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 15, 2024, defendants filed a notice of plaintiff's death. (Doc. No. 69.) Defendants also filed a certificate of service indicating that they served plaintiff's next of kin, as identified by California Department of Corrections and Rehabilitation records, with the notice of plaintiff's death and plaintiff's complaint, in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. (*Id.* at 3.)

On October 17, 2024, the assigned magistrate judge issued the pending findings and recommendations recommending that this action be dismissed. (Doc. No. 71.) In particular, the magistrate judge noted that pursuant to Federal Rule of Civil Procedure 25, a motion for substitution of a proper party must be made no later than ninety days after the death is suggested

1 upon the record. (*Id.* at 1.) The magistrate judge observed that that time period had expired and
2 that no motion for substitution had been filed. (*Id.*)

3 The pending findings and recommendations were served on plaintiff's address of record
4 and contained notice that any objections thereto were to be filed within fourteen (14) days after
5 service. (*Id.*) To date, no objections to the findings and recommendations have been filed, and
6 the time in which to do so has now passed.

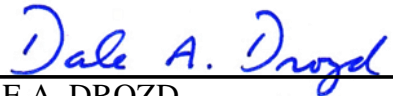
7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
9 findings and recommendations are supported by the record and by proper analysis.

10 Accordingly:

- 11 1. The findings and recommendations issued on October 17, 2024 (Doc. No. 71) are
12 ADOPTED in full;
- 13 2. This action is DISMISSED, as no motion for substitution has been filed; and
- 14 3. The Clerk of the Court is directed to CLOSE this case.

15 IT IS SO ORDERED.

16 Dated: April 1, 2025

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18 DALE A. DROZD
19 UNITED STATES DISTRICT JUDGE
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